

**THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**CLIFFORD ALLEN POWERS,**

**Petitioner,**

**v.**

**CIVIL ACTION NO. 3:05CV29  
(BROADWATER)**

**THOMAS L. MCBRIDE,  
Warden,**

**Respondent.**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert (Doc. No. 36), dated July 24, 2006, and the petitioner's corresponding objections (Doc. No. 39), filed September 18, 2006. After conducting a *de novo* review of the above, in accordance with 28 U.S.C. § 636(b)(1), the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be, and is, **ORDERED** adopted. Based on the reasons set forth in the Magistrate Judge's Report and Recommendation,

The Court further **ORDERS**

1. That petitioner's **Motion for Leave to Amend**<sup>1</sup> is **DENIED**;
2. That respondent's **Motion to Dismiss and Motion for Summary Judgment**<sup>2</sup> is **GRANTED**; and
3. That petitioner's 28 U.S.C. § 2254 petition is hereby **DENIED and DISMISSED WITH PREJUDICE**. It is further **ORDERED** that this action be, and hereby is,

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<sup>1</sup> Doc. No. 21.

<sup>2</sup> Doc. No. 15.

**STRICKEN** from the active docket of this Court.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record herein.

**DATED** this 29<sup>th</sup> day of September, 2006.

  
W. CRAIG BROADWATER  
UNITED STATES DISTRICT JUDGE